MONTANA LEGISLATIVE HISTORY

Chapter 302 19 97

Bill H _____ S 216 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 3/14	✓ C	Hearing Date(s) 2/4	✓ C
_____	____ C	_____	____ C
_____	____ C	_____	____ C
_____	____ C	_____	____ C
Date Out _____	____ C	2/4	✓

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

SB 214 INTRODUCED BY ECK, ET AL. *LC0935 DRAFTER: KURTZ*

AUTHORIZE MUNICIPALITIES AND COUNTY GOVERNMENTS TO RECRUIT AND TRAIN VOLUNTEERS TO ISSUE CITATIONS TO MOTOR VEHICLE OWNERS OR OPERATORS WHO VIOLATE DISABLED PARKING REGULATIONS

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO LOCAL GOVERNMENT		
1/25	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/04	HEARING		
2/04	FISCAL NOTE PRINTED		
2/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	32	18
2/17	3RD READING PASSED	32	18
	TRANSMITTED TO HOUSE		
2/21	FIRST READING		
2/21	REFERRED TO TRANSPORTATION		
3/10	HEARING		
3/10	TABLED IN COMMITTEE		
3/11	REVISED FISCAL NOTE RECEIVED		
3/11	REVISED FISCAL NOTE PRINTED		
	DIED IN COMMITTEE		

SB 215 INTRODUCED BY ECK, ET AL. *LC0576 DRAFTER: MALY*

CLARIFY THE RIGHTS OF MOBILE HOME OWNERS AND MOBILE HOME PARK OWNERS WITH RESPECT TO THE SALE OF A MOBILE HOME IN THE PARK

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO JUDICIARY		
2/06	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING DO PASS MOTION FAILED	24	26
2/18	MOTION FAILED TO RECONSIDER PREVIOUS ACTION	20	26

SB 216 INTRODUCED BY VAN VALKENBURG, ET AL. *LC0689 DRAFTER: LANE*

REVISE PROCEDURES FOR POSTJUDGMENT REVIEW IN CRIMINAL CASES

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO JUDICIARY		
1/25	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE PRINTED		
2/04	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	44	3
2/10	3RD READING PASSED	46	3
	TRANSMITTED TO HOUSE		
2/11	FIRST READING		
2/11	REFERRED TO JUDICIARY		
3/14	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED	66	29
3/24	3RD READING CONCURRED	71	28

	RETURNED TO SENATE WITH AMENDMENTS		
4/07	2ND READING AMENDMENTS CONCURRED	49	0
4/08	3RD READING CONCURRED AS AMENDED	49	1
4/14	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 302		
	EFFECTIVE DATE: 04/17/97		

SB 217 INTRODUCED BY KEATING, ET AL. *LC1234 DRAFTER: STERNBERG*

ESTABLISH THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AS THE LEAD AGENCY FOR MANAGEMENT OF WILD BUFFALO OR BISON

1/24	INTRODUCED
1/24	FIRST READING
1/24	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
1/25	FISCAL NOTE REQUESTED
1/31	HEARING
1/31	FISCAL NOTE RECEIVED
1/31	FISCAL NOTE PRINTED
2/19	TABLED IN COMMITTEE
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
	DIED IN COMMITTEE

SB 218 INTRODUCED BY BURNETT *LC1354 DRAFTER: STERNBERG*

ELIMINATE THE STATE MEAT AND POULTRY INSPECTION PROGRAM

1/24	INTRODUCED
1/24	FIRST READING
1/24	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
1/25	FISCAL NOTE REQUESTED
1/29	HEARING
1/30	FISCAL NOTE RECEIVED
1/30	FISCAL NOTE PRINTED
1/31	TABLED IN COMMITTEE
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
	DIED IN COMMITTEE

SB 219 INTRODUCED BY FRANKLIN, ET AL. *LC0114 DRAFTER: MACMASTER*

CREATE THE CRIMINAL OFFENSE OF SURREPTITIOUS VISUAL OBSERVATION OR RECORDATION IN A PLACE OF RESIDENCE

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO JUDICIARY		
1/25	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE PRINTED		
2/04	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	30	19
2/19	3RD READING PASSED	34	16
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO JUDICIARY		
3/20	HEARING		
4/02	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/03	2ND READING CONCURRED	85	14
4/04	3RD READING CONCURRED	83	15

Senate BILL NO. 216

INTRODUCED BY Van Valkenburg

Anderson Cx Johnson

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROCEDURES FOR POSTJUDGMENT REVIEW IN CRIMINAL CASES; CLARIFYING THE STANDARDS FOR APPELLATE REVIEW OF A DEATH SENTENCE; CLARIFYING THE REQUIRED CONTENTS OF POSTCONVICTION RELIEF PETITIONS; CLARIFYING THE GROUNDS FOR RELIEF THAT MAY BE RAISED AND DECIDED IN A POSTCONVICTION PROCEEDING; AMENDING SECTIONS 46-18-310, 46-21-104, AND 46-21-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, it is the public policy of the State of Montana to provide persons accused of crimes with a fair and speedy trial and direct appellate review of legal issues fairly presented to the trial court; and

WHEREAS, the privilege of the writ of habeas corpus is preserved by Article II, section 19, of the Montana Constitution; and

WHEREAS, the Legislature has set forth in Title 46, chapter 21, MCA, procedures for protecting an offender's right to postconviction review of the judgment; and

WHEREAS, there is no federal constitutional right to a specific statutorily prescribed postconviction procedure; and

WHEREAS, it is the Legislature's intent that decisions of Montana juries and judgments of Montana trial courts in criminal cases, including death penalty cases, be respected and given finality by other reviewing courts unless errors affecting an offender's substantial rights have occurred; and

WHEREAS, amendments to Montana's postconviction relief and death penalty statutes will further the goal of finality by codifying certain interpretations of those statutes by the Montana Supreme Court and clarifying legislative intent with respect to other provisions.

THEREFORE, it is the policy of the State of Montana to prescribe and limit, consistent with constitutional safeguards of the criminal justice process, the authority of an appellate or other reviewing court to consider legal and factual issues determined by the trial or sentencing court.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-310, MCA, is amended to read:

"46-18-310. Supreme court's determination as to the sentence. (1) The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

~~(1)~~(a) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

~~(2)~~(b) whether the evidence supports the judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304; and

~~(3)~~(c) whether the sentence of death is excessive or disproportionate to the penalty imposed in ~~similar~~ other cases in which a sentencing hearing was held pursuant to 46-18-301, whether the sentence imposed was death or a sentence other than death, considering both the crime and the defendant. The court shall include in its decision a reference to those ~~similar~~ other cases it took into consideration.

(2) The supreme court shall uphold the sentencing court's findings of fact issued pursuant to 46-18-306 unless those findings are clearly erroneous. The supreme court may not substitute its judgment for that of the sentencing court in assessing the credibility of witnesses; drawing inferences from testimonial, physical, documentary, or other evidence; or resolving conflicts in the evidence presented at the sentencing hearing or considered by the sentencing court."

Section 2. Section 46-21-104, MCA, is amended to read:

"46-21-104. Contents of petition. (1) The petition for postconviction relief must:

(a) identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations;

(b) identify any previous proceedings that the petitioner may have taken to secure relief from ~~his~~ the conviction; and

(c) ~~have~~ identify all facts supporting the grounds for relief set forth in the petition and attached ~~any~~ affidavits, records, or other evidence ~~supporting its allegations or state why the evidence is not attached~~ establishing the existence of those facts.

(2) The petition must be accompanied by a supporting memorandum, including appropriate arguments and citations and discussion of authorities."

Section 3. Section 46-21-105, MCA, is amended to read:

"**46-21-105. Amendment of petition -- waiver of grounds for relief.** (1) All grounds for relief claimed by a petitioner under 46-21-101 must be raised in the original or amended petition. The original petition may be amended only once. At the request of the state or on its own motion, the court shall set a deadline for the filing of the amended petition. If a hearing will be held, the deadline must be reasonably in advance of the hearing but may not be less than 30 days prior to the date of the hearing. Those grounds for relief not raised in the original or amended petition are waived unless the court on hearing a subsequent petition finds grounds for relief that could not reasonably have been raised in the original or amended petition.

(2) When a petitioner has been afforded the opportunity for a direct appeal of the petitioner's conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised ~~in the original or amended petition~~, considered, or decided in a proceeding brought under this chapter.

(3) For purposes of this section, "grounds for relief" includes all legal and factual issues that were or could have been raised in support of the petitioner's claim for relief."

NEW SECTION. **Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0216, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising procedures for postjudgment review in criminal cases.

FISCAL IMPACT:
There is no fiscal impact to the state.

Dave Lewis 1.30.97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred Van Valkenburg 1-31-97
FRED VAN VALKENBURG, PRIMARY SPONSOR DATE

SENATE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0201	1/20	1/29		TABLED ON 01/30 VOTE:		
SB0202	GLASER, BILL 1/20	1/29	DEATH PENALTY FOR 2ND CONVICTION OF CERTAIN DRUG OFFENSES	TABLED ON 01/30 VOTE:		
SB0205	MCNUTT, WALTER 1/21	1/30	ALLOW TRUTH AS AN ABSOLUTE DEFENSE IN CRIMINAL DEFAMATION	DO PASS VOTE: 10-0	1-30	1/30
SB0210	COLE, MACK 1/22	2/03	CRIMINALIZE REFUSAL TO TAKE DUI TESTS	TABLED ON 02/05 VOTE:7-3		
SB0212	MCNUTT, WALTER 1/22	1/30	REQUIRE JURY AWARD OF PUNITIVE DAMAGES TO BE UNANIMOUS AS TO LIABILITY & AMT	PASS AS AMENDED VOTE: 10-0	2-6	2/08
SB0215	ECK, DOROTHY 1/24	2/06	MOBILE HOME EQUITY PROTECTION ACT	PASS AS AMENDED VOTE: 9-1	2-12	2/14
SB0216	VAN VALKENBURG, FRED 1/24	2/04	REVISE POSTCONVICTION RELIEF	PASS AS AMENDED VOTE: 10-0	2-4	2/05
SB0219	FRANKLIN, EVE 1/24	2/04	CREATING "PEEPING TOM" CRIMINAL OFFENSE	PASS AS AMENDED VOTE: 8-2	2-12	2/14
SB0222	GLASER, BILL 1/25	2/03	REVISE DANGEROUS DRUG AND DUI LAWS	DO PASS VOTE:6-4	2-5	2/06
SB0227	DOHERTY, STEVE 1/27	2/06	LIMIT RENT INCREASE ON SPACE IN MOBILE HOME PARK	TABLED ON 02/12 VOTE: 6-4		
SB0230	THOMAS, FRED 1/27	2/03	DISCIPLINE OF MEDICAL PROFESSIONAL ASSISTING IN A SUICIDE	TABLED ON 02/14 VOTE:6-4		
SB0231	EMERSON, C. A. 1/27	2/05	REFERENDUM FOR CONSTIT. AMENDMENT - CONTROL OF THE JUDICIARY	TABLED ON 02/17 VOTE:9-1		
	BENEDICT, STEVE		ESTABLISH ACCOUNTANT STATUTE OF LIMITATIONS			

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 4, 1997, at 9:00 A.M., in Room 108.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 216, 1/25/97
	SB 219, 1/25/97
	SB 247, 1/29/97
	SB 232, 1/27/97
Executive Action:	SB 109
	SB 216

HEARING ON SB 216

Sponsor: **SEN. FRED VAN VALKENBURG, SD 32, MISSOULA**

Proponents: **Beth Baker, Department of Justice**

Opponents: **None**

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, MISSOULA, introduced SB 216 which he brought at the request of the Department of Justice. This bill would clarify legislative intent with respect to the issue of post-conviction relief and particularly with respect to death penalty cases in Montana. The essence of this bill is to give greater weight to a sentencing court's factual findings with respect to the sentence that it imposes. The Montana Supreme Court examines death penalty cases very closely. The Department feels that a trial judge is in a better position to make those findings of fact and unless they are clearly erroneous, the legislature would then be directing the Supreme Court to uphold those findings of fact. This bill also attempts to assure that people who are pursuing post-conviction relief have an incentive to get all the issues in beforehand, thus limiting the issues considered in post-conviction relief.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 9:10}

Beth Baker, Department of Justice, stated the purpose of this bill is to reaffirm the legislature's intent that the main event of a criminal case is the trial. The trial judge should be given the opportunity to address the legal issues which arise in the case and those issues should be presented on direct appeal of the conviction. Post-conviction proceedings are not a substitute for direct appeal of the case.

Section 1 of the bill is an amendment to 46-18-310, which is in the death penalty section of the sentencing statute, and provides for the scope of the Supreme Court's automatic review of the death penalty.

Subsection (1)(c) adds language to clarify and adopt the ruling of the Montana Supreme Court in the Roland Allen Smith case that review is limited to cases in which a death sentencing hearing was held. In a death penalty case, the Supreme Court conducts a proportionality review. They look at the crime which was committed by the defendant and decide whether the sentence is proportionate in comparison to other similar cases. The Court in Smith held that that proportionality, review should look at other cases in which the death sentencing hearing was held. Only in those cases, is there a record presented of aggravated circumstances and mitigative circumstances which sentencing judges are required to consider and for which specific statute findings have to be adopted. The problem with looking at all other cases, is that there is not a comparable record which can be examined by the Supreme Court.

Subsection (2) is in response to the decision of the Supreme Court in the Vernon Kills-On-Top case. In that case, the Supreme Court, on post-conviction appeal in 1996, overturned its previous decision

in 1990 of upholding Mr. Kills-On-Top's death sentence. The purpose of this subsection is to make it clear that the Supreme Court's review on appeal is not to reweigh the evidence, and not to judge on its own the credibility of witnesses heard by the trial court, but to uphold the sentence of the trial court as supported by the evidence. The trial judge is in the best position to make these decisions because he sees the witnesses and listens to the testimony.

Section 2 of the bill clarifies that the petition for post-conviction relief must identify the facts on which the claim is based.

Page 2, line 25, of the bill contains a technical error. The word "attach" should read "attached".

The first change in subsection (2) on line 10, clarifies that if the petitioner has been afforded the opportunity for appeal, he cannot come back and raise claims which could have been raised on direct appeal. This codifies current case law in that if the defendant takes advantage of his right to appeal, this does not determine his ability to raise claims in post-conviction. If the appeal is afforded, but not timely filed, the court will not consider claims of post-conviction proceedings which could have been raised on direct appeal.

Line 12 incorporates the judicial doctrine of res judicata in post-conviction statutes. Res judicata means the matter adjudged. The principle is that once an issue has been decided by a court, it is finally decided and cannot be raised again. In the Kills-On-Top case, the Montana Supreme Court stated that the Montana Legislature had not adopted these principles for post-conviction cases. However, it has been adopted in the Uniform Post-Conviction Act. The Supreme Court has applied that doctrine judicially for many years. Subsection (3) is also a response to the Kills-On-Top decision. It clarifies that a ground for relief is in the meaning of the post-conviction statutes and includes all arguments, both factual and legal, which could have been or were raised in support of the claim for relief. This is a long standing principle applied in criminal cases that new arguments in support of a claim cannot be raised for the first time on appeal. The reason is that the trial judge is to be given the opportunity to hear those issues, consider them, and try to correct errors when they occur at the trial level. In Kills-On-Top, the court said that a ground for relief means the claim as a whole and new arguments could be presented in support of that claim. This will prolong the appeal process.

This bill deals with finality. The only difference, substantively, between the 1990 decision and the 1996 decision was that the members of the court had changed. Only two of the justices who sat on the appeal were still on the court when the case came back in 1996. The record is the same. The transcripts are the same. The law had not changed. Post-conviction proceedings should be

reserved for extraordinary matters which could have not been raised during the trial. She provided the committee with a handout, **EXHIBIT 1.** Additional handout, Kills-On-Top v. State opinion, **EXHIBIT 2.**

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 9:20; Comments: .}

SEN. STEVE DOHERTY asked **Ms. Baker** to provide the committee with the Supreme Court decision which they were being asked to directly overrule.

Ms. Baker replied she would do so.

CHAIRMAN CRIPPEN did not feel that they were directly overruling the court. The role of the legislature, by statute, is to correct and give guidelines to the court. He referred to Section 1(2), stating that the language is very clear and concise. It states that as a matter of law, the Supreme Court may not substitute its judgement for that of the sentencing court in assessing the credibility of witnesses drawing inferences from testimonial, physical, documentary or other evidence.

SEN. VAN VALKENBURG agreed that this would primarily clarify the law and more succinctly stated the legislative intent with respect to the standards for review in post-conviction relief.

SEN. MIKE HALLIGAN asked if there was parallel law in other jurisdictions which have been looked at to make sure there was consistency?

Ms. Baker stated that some of the principles are consistent with the Uniform Post-Conviction Act and that a lot of this bill came from other decisions by the Montana Supreme Court.

Closing by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 9:24; Comments: .}

SEN. VAN VALKENBURG felt the most important reason for the legislature to pass this bill was to clearly state its own intent, with respect to the standard of review in post-conviction relief, and in doing so to ensure that the process of review, particularly in death penalty cases, would be shortened. We do not need to have a 20 year review on death penalty cases.

document which they take findings from to incorporate in the presentence investigation to give the judge a foundation for why the parole officer is making the recommendation on the presentence investigation report. Psychosexual evaluation is not given to the county attorney in its entirety. The defense attorney and the defendant can chose to release it. That would not be automatic.

SEN. HALLIGAN stated that alcohol and substance abuse evaluations would also be protected by federal laws. Prosecutors would not be getting that information. There needs to be a clarification that a presentence investigation report should include those reports.

Substitute Motion: **SEN. HALLIGAN MOVED TO AMEND THE SECTION OF THE CODE WHICH STATED THAT "ALL PRESENTENCE INVESTIGATION REPORTS MUST BE PART OF THE COURT RECORD BUT MAY NOT BE OPEN FOR PUBLIC INSPECTION."**

Discussion:

Ms. Lane stated she could amend this to include the psychosexual evaluations by amending 46-18-113 to say that the presentence report must go to certain people and must include the psychosexual evaluation under this section. She is not clear as to what other kinds of evaluations the committee wanted to pick up.

SEN. HOLDEN withdrew his motion.

SEN. BARTLETT stated that the Sentencing Commission polled the district court case files for 1000 sentences which were issued in 1994 in felony cases. In over half of those cases, there was no presentence investigation. Subsection (2) will restore the phrase "unless the court makes a finding that a report is unnecessary." She would like to see that language stricken to make it the intent of the legislature that these presentence investigation reports be prepared in felony cases.

SEN. ESTRADA felt that was a very important matter to include.

SEN. HALLIGAN stated that he has a lot of first time felons and there would be no reason for a presentence investigation.

Ms. Lane explained that she understood that she should not reinsert "unless the court makes a finding that a report is unnecessary."

EXECUTIVE ACTION ON SB 216

Motion: **SEN. HALLIGAN MOVED SB 216 DO PASS.**

Discussion:

SEN. GROSFIELD asked about the change mentioned on page 2, line 25.

Ms. Lane suggested inserting the word "have".

SEN. HALLIGAN withdrew his motion.

Motion/Vote: **SEN. HALLIGAN MOVED SB 216 BE AMENDED.** The **MOTION CARRIED.**

Motion/Vote: **SEN. HALLIGAN MOVED SB 216 DO PASS AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY.**

ADJOURNMENT

Adjournment: The meeting adjourned at 12:05 p.m.

SEN. BRUCE D. CRIPPEN, Chairman

JUDY KEINTZ, Secretary

BDC/JJK

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2/4/97
BILL NO. SB 216

DEPARTMENT OF JUSTICE
SB 216: Clarifying Montana's Post-Conviction Laws

Background

In 1987, Vern Kills on Top was tried for homicide in the torture and murder of a Miles City man. He was found guilty in district court and sentenced to death for his crime. The Montana Supreme Court upheld his conviction and sentence in 1990. However, after additional post-conviction appeals, the supreme court last year permanently overturned the death penalty, barring the state from reseeking the death penalty in any future resentencing procedures.

The State of Montana's policy is to provide people accused of crimes with a fair and speedy trial, and with direct appellate review of the legal issues presented to the trial court. However, overturning the sentence in the Vern Kills on Top case and other recent court decisions raise concerns that the rules governing the state's post-conviction review process are unclear. As a result, the decisions of the trial court seem to be open to endless reconsideration.

Purpose of SB 216

SB 216 proposes a number of changes that will provide greater consistency and clarity in the laws governing post-conviction review of criminal cases in Montana. Specifically, SB 216:

→ **Gives greater respect and finality to the decisions made by Montana juries and trial courts.** SB 216 clearly states that it is the Legislature's intent that the decisions made by Montana juries and the judgments of trial courts in criminal cases, including death penalty cases, be respected and given finality by other reviewing courts, unless errors affecting an offender's rights have been made.

→ **Reinforces that the trial court is in the best position to weigh evidence, testimony and the credibility of witnesses.** SB 216 codifies a number of cases in which the Montana Supreme Court has ruled that it will defer to trial courts. These changes would prevent the supreme court from substituting its judgment for that of the sentencing court in weighing the credibility of witnesses, drawing inferences from evidence and resolving conflicting evidence.

→ **Limits the legal and factual issues that can be raised in a post-conviction proceeding.** SB 216 clarifies that, if there has been an opportunity for those issues to be considered on direct appeal of the conviction, they may not be considered again.

--over--

→ **Clarifies the scope of the Montana Supreme Court's statutory obligation to review a death penalty sentence.** The supreme court is required to conduct a proportionality review of any case that results in a death penalty sentence to ensure that the sentence is consistent with the penalty imposed in similar cases. SB 216 specifies that, in conducting the review, the supreme court may consider all cases in which a death penalty sentencing hearing was held, whether or not a sentence of death was actually imposed. This change makes it clear that the court should not attempt to examine other cases in which there is no comparable record of aggravating and mitigating circumstances, as required in a capital sentencing proceeding.

SB216 also adopts current case law that, in reviewing a death sentence, the function of the appeals court is to determine whether the evidence supports the sentencing judge's findings -- not to reweigh the aggravating and mitigating circumstances.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2/4/97
BILL NO. SB216

VERNON KILLS ON TOP,
Petitioner and Appellant,
v.
STATE OF MONTANA,
Defendant and Respondent.

No. 94-183.
Submitted on Briefs November 2, 1995.
Decided November 25, 1996.
53 St.Rep. 1197.
____Mont.____.
____P.2d____.

CRIMINAL LAW - PRACTICE AND PROCEDURE - POSTCONVICTION RELIEF - SENTENCING - DEATH PENALTY - APPEAL AND ERROR - ATTORNEY AND CLIENT - CONSTITUTIONAL LAW - WITNESSES - RES JUDICATA, Petitioner was convicted of robbery, aggravated kidnapping, and deliberate homicide following trial by jury in the District Court. He was sentenced to forty years for the
and death for the kidnapping and homicide. H
viction was upheld on appeal. He then filed a p
for postconviction relief which was dismisse
motions to amend and for reconsideration we
nied. He appealed denial of his amended petitic
his motion for reconsideration. The Supreme
held:

1. CRIMINAL LAW - PRACTICE AND PR
DURE - POSTCONVICTION RELIEF, A petitic
postconviction relief is civil in nature and in
instances the Montana Rules of Civil Procedure a

2. CRIMINAL LAW - SENTENCING - DE
PENALTY, Whether one person lives and ano
dies for conduct alleged to have occurred during the same transaction should not hinge on a district court's discretionary denial of a motion to amend a petition for postconviction relief.

3. APPEAL AND ERROR - CRIMINAL LAW - POSTCONVICTION RELIEF - PRACTICE AND PROCEDURE, The District Court erred when it denied petitioner's motion to amend his petition for postconviction relief.

4. ATTORNEY AND CLIENT - CRIMINAL LAW, Section 46-21-104(1)(c), MCA, requires that a claim of ineffective assistance of counsel must be grounded on facts in the record and not merely on conclusory allegations.

5. ATTORNEY AND CLIENT - CRIMINAL LAW - PRACTICE AND PROCEDURE - POSTCONVICTION RELIEF, Petitioner is entitled to a hearing based on his claim that his attorney had a conflict of interest based on (1) his campaign for the office of county attorney which was allegedly based on a promise to crack down on crime, and (2) his hostility toward criminal defendants as evidenced by his book, *Death Sentence, Murder on the Prairie*.

6. ATTORNEY AND CLIENT - CRIMINAL LAW - CONSTITUTIONAL LAW, The Sixth Amendment guarantee to effective assistance of counsel comprises both the right to reasonably competent counsel and the right to that counsel's undivided loyalty.

7. ATTORNEY AND CLIENT - CRIMINAL LAW - CONSTITUTIONAL LAW, The standard set by the U.S. Supreme Court for establishing a violation of the Sixth Amendment based on an attorney's conflict of interest requires a defendant to show that (1) an actual conflict of interest existed, and (2) that actual conflict adversely affected his lawyer's performance.

8. ATTORNEY AND CLIENT - CRIMINAL LAW - PRACTICE AND PROCEDURE, Although the petitioner presented documentation of his [illegible]

Exhibit # 2 SB216
30+ Pages of Court Case
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

ner at the time of trial.

10. ATTORNEY AND CLIENT - CRIMINAL LAW, Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.

11. ATTORNEY AND CLIENT - CRIMINAL LAW, An attorney's failure to investigate potential defense witnesses may fall below the level of competent representation required by professional standards and the U.S. Constitution.

12. ATTORNEY AND CLIENT - CRIMINAL LAW - WITNESSES, A hearing is required in this case to determine whether petitioner was deprived of a fair trial by virtue of his counsel's failure to adequately investigate the prosecution's primary witness prior to trial and to make use of her previous trial testimony during her cross-examination at petitioner's trial.

13. RES JUDICATA - CRIMINAL LAW - APPEAL AND ERROR - POSTCONVICTION RELIEF, res ju-

HOUSE JUDICIARY

- BILL NO -	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0205	MCNUTT, WALTER		ALLOW TRUTH AS AN ABSOLUTE DEFENSE IN CRIMINAL DEFAMATION			
	2/07	3/11		CONCUR 03/11 VOTE: 15-0		3/11
SB0212	MCNUTT, WALTER		REQUIRE JURY AWARD OF PUNITIVE DAMAGES TO BE UNANIMOUS AS TO LIABILITY & AMT			
	2/13	3/05		CONCUR AS AMENDED 03/06 VOTE: 9-8		3/07
SB0216	VAN VALKENBURG, FRED		REVISE POSTCONVICTION RELIEF			
	2/11	3/14		CONCUR AS AMENDED 03/14 VOTE: 10-8		3/14
SB0219	FRANKLIN, EVE		CREATING "PEEPING TOM" CRIMINAL OFFENSE			
	2/22	3/20		CONCUR AS AMENDED 03/27 VOTE: 15-3		4/02
SB0222	GLASER, BILL		REVISE DANGEROUS DRUG AND DUI LAWS			
	2/11			VOTE:	2/14/97	
SB0232	BENEDICT, STEVE		ESTABLISH ACCOUNTANT STATUTE OF LIMITATIONS			
	2/13	3/14		CONCUR 03/14 VOTE: 14-4		3/14
SB0263	BISHOP, AL		GENERALLY REVISE ESTATE, TRUST, AND FIDUCIARY LAWS			
	2/21	3/20		CONCUR AS AMENDED 03/27 VOTE: 19-0		4/02
SB0270	BENEDICT, STEVE		CLARIFY AND EXPAND LAWS GOVERNING INSURANCE AND SECURITIES FRAUD			
	3/03	3/20		CONCUR AS AMENDED 03/24 VOTE: 16-0		3/25
SB0277	BARTLETT, SUE		REVISE DISTRICT COURT SMALL CLAIMS PROCEDURE			
	2/13	3/14		CONCUR 03/14 VOTE: 16-0		3/14
SB0283	BURNETT, JIM		CHILD ABUSE/NEGLECT PROC. REQUIRE PARENT INPUT BEFORE TIA ISSUED			
	2/21	3/21		CONCUR AS AMENDED 03/27 VOTE: 10-7		4/03
SB0289	ECK, DOROTHY		CRIMINAL SURCHARGE TO FUND VICTIM/WITNESS ASSISTANCE PROGRAMS			
	2/21	3/25		TABLED ON 03/27 VOTE: 17-3		
SB0308	BECK, TOM		ENACT GOVERNMENT ACCOUNTABILITY ACT			
	3/03	3/21		CONCUR 03/25 VOTE: 13-7		3/26

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By VICE-CHAIRMAN DAN MC GEE, on March 14, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Bob Clark, Chairman (R)

Members Absent: Rep. H.S. "Sonny" Hanson (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:		SB 216, SB 232, SB 277 POSTED 2/24/97
	Executive Action:	SB 44 and SB 216 BE CONCURRED IN AS AMENDED SB 232 and SB 277 BE CONCURRED IN HB 122 AMENDMENTS BE NOT CONCURRED IN

HEARING ON SB 232

Opening Statement by Sponsor: SEN. STEVE BENEDICT EXHIBIT 1
{Tape: 1; Side: A; Approx. Time Count: 1.9; Comments: This set of minutes is recorded on 60-minute tapes.}

Proponents' Testimony:

TOM HARRISON, Society of CPA'S
{Tape: 1; Side: A; Approx. Time Count: 3.9; Comments: This proponent did not sign in.}

Opponents' Testimony:

RUSSELL HILL, Montana Trial Lawyers' Association (MTLA)
{Tape: 1; Side: A; Approx. Time Count: 6.4; Comments: This opponent did not sign in.}

Questions From Committee Members and Responses:
Tape: 1; Side: A; Approx. Time Count: 8.5-19.1}

Closing by Sponsor: SEN. BENEDICT
{Tape: 1; Side: A; Approx. Time Count: 19.2}

HEARING ON SB 216

Opening Statement by Sponsor: SEN. FRED VAN VALKENBURG
{Tape: 1; Side: A; Approx. Time Count: 20.2}

Proponents' Testimony:

BETH BAKER, Department of Justice EXHIBITS 2-3
{Tape: 1; Side: A; Approx. Time Count: 28.6}

Opponents' Testimony:

WILLIAM HANKS, Appellate Defense Office
{Tape: 1; Side: B; Approx. Time Count: 10.7}

MICHAEL DONAHOE
{Tape: 1; Side: B; Approx. Time Count: 23.2}

RUSSELL HILL, MTLA
{Tape: 1; Side: B; Approx. Time Count: 26.8}

Questions From Committee Members and Responses:
{Tape: 2; Side: A; Approx. Time Count: 7.6-Tape 2; Side B; 10.9}

Closing by Sponsor: SEN. VAN VALKENBURG
{Tape: 2; Side: B; Approx. Time Count: 11.0}

Vote: The motion failed 7 - 10; REPS. WYATT, KOTTEL, MC GEE, GRIMES, MOLNAR, BERGMAN and CURTISS voting aye.

Vote: The motion to concur in SB 232 carried 14 - 4; REPS. MOLNAR, GRIMES, CURTISS and MC GEE voting no. REP. MC CULLOCH voted aye by proxy. **REP. ANDERSON will carry SB 232**

EXECUTIVE ACTION ON SB 216

Motion: **REP. ANDERSON moved SB 216 BE CONCURRED IN.** *{Tape: 3; Side: A; Approx. Time Count: 25.4}*

Motion: **REP. ANDERSON moved the coordinating amendments for SB 216.** *{Tape: 3; Side: A; Approx. Time Count: 25.6}*

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 26.4-Tape 3; Side B; 2.8}

Vote: The motion carried 11 - 7; REPS. ELLINGSON, HURDLE, WYATT, MC CULLOCH (proxy); PEASE, SANDS and KOTTEL voting no. REP. GRIMES voted aye by proxy.

Motion: **REP. ANDERSON moved SB 216 BE CONCURRED IN AS AMENDED.** *{Tape: 3; Side: B; Approx. Time Count: 3.7}*

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 3.8-end of tape}

Vote: The motion carried 10 - 8; REPS. MOLNAR, ELLINGSON, HURDLE, SANDS, KOTTEL, MC CULLOCH, PEASE and WYATT voting no.
REP. ANDERSON will carry SB 216.
{Tape: 4; Side: A; Approx. Time Count: 0.1; Comments: REP. MC CULLOCH had returned to the committee at this point in the meeting.}

EXECUTIVE ACTION ON HB 122

Amendment: **EXHIBITS 5-5B**

Motion: **REP. BOHARSKI moved to reject the Senate amendments.** *{Tape: 4; Side: A; Approx. Time Count: 2.5}*

Discussion: Brief discussion, time not noted on tape.

Vote: The motion carried 10 - 6; REPS. WYATT, MC CULLOCH, PEASE, SANDS, ELLINGSON, and HURDLE voting no.
{Tape: 4; Side: A; Approx. Time Count: 6.5}

*{Tape: 4; Side: A; Approx. Time Count: 7.0; Comments: Exhibit for SB 374 was distributed for the committee's information.}***EXHIBIT 6**

{Tape: 4; Side: A; Approx. Time Count: 7.1; Comments: REP. HURDLE objected to the order and procedure being taken in considering bills for executive action.}

EXHIBIT 2
DATE 3/14/97
SB 216

DEPARTMENT OF JUSTICE
SB 216: Clarifying Montana's Post-Conviction Laws

Background

In 1987, Vern Kills on Top was tried for homicide in the torture and murder of a Miles City man. He was found guilty in district court and sentenced to death for his crime. The Montana Supreme Court upheld his conviction and sentence in 1990. However, after additional post-conviction appeals, the supreme court last year permanently overturned the death penalty, barring the state from reseeking the death penalty in any future resentencing procedures.

The State of Montana's policy is to provide people accused of crimes with a fair and speedy trial, and with direct appellate review of the legal issues presented to the trial court. However, overturning the sentence in the Vern Kills on Top case and other recent court decisions raise concerns that the rules governing the state's post-conviction review process are unclear. As a result, the decisions of the trial court seem to be open to endless reconsideration.

Purpose of SB 216

SB 216 proposes a number of changes that will provide greater consistency and clarity in the laws governing post-conviction review of criminal cases in Montana. Specifically, SB 216:

→ **Gives greater respect and finality to the decisions made by Montana juries and trial courts.** SB 216 clearly states that it is the Legislature's intent that the decisions made by Montana juries and the judgments of trial courts in criminal cases, including death penalty cases, be respected and given finality by other reviewing courts, unless errors affecting an offender's rights have been made.

→ **Reinforces that the trial court is in the best position to weigh evidence, testimony and the credibility of witnesses.** SB 216 codifies a number of cases in which the Montana Supreme Court has ruled that it will defer to trial courts. These changes would prevent the supreme court from substituting its judgment for that of the sentencing court in weighing the credibility of witnesses, drawing inferences from evidence and resolving conflicting evidence.

→ **Limits the legal and factual issues that can be raised in a post-conviction proceeding.** SB 216 clarifies that, if there has been an opportunity for those issues to be considered on direct appeal of the conviction, they may not be considered again.

--over--

→ **Clarifies the scope of the Montana Supreme Court's statutory obligation to review a death penalty sentence.** The supreme court is required to conduct a proportionality review of any case that results in a death penalty sentence to ensure that the sentence is consistent with the penalty imposed in similar cases. SB 216 specifies that, in conducting the review, the supreme court may consider all cases in which a death penalty sentencing hearing was held, whether or not a sentence of death was actually imposed. This change makes it clear that the court should not attempt to examine other cases in which there is no comparable record of aggravating and mitigating circumstances, as required in a capital sentencing proceeding.

SB216 also adopts current case law that, in reviewing a death sentence, the function of the appeals court is to determine whether the evidence supports the sentencing judge's findings -- not to reweigh the aggravating and mitigating circumstances.

EXHIBIT 2
DATE 3/14/97
SB 216

Amendments to Senate Bill 216
Third Reading Copy (Blue)

Prepared by Beth Baker
Department of Justice
For the House Committee on Judiciary
March 13, 1997

1. Page 3, line 11.
Following: "that"
Insert: "were or"

2. Page 3, following line 14.
Insert:
"NEW SECTION. **Section 4. Coordination Instruction.** If House Bill 222 is passed and approved, and if it includes a section that amends subsection (2) of 46-21-105, then the section in House Bill 222 amending 46-21-105 is void and [section 3 of this act] must read as follows:

Section 3. Section 46-21-105, MCA, is amended to read:
"**46-21-105. Amendment of petition -- waiver of grounds for relief.** (1) (a) All grounds for relief claimed by a petitioner under 46-21-101 must be raised in the original or amended original petition. The original petition may be amended only once. At the request of the state or on its own motion, the court shall set a deadline for the filing of ~~the~~ an amended original petition. If a hearing will be held, the deadline must be reasonably in advance of the hearing but may not be less than 30 days prior to the date of the hearing.

(b) ~~Those grounds for relief not raised in the original or amended petition are waived unless the court on hearing a subsequent petition finds~~ The court shall dismiss a second or subsequent petition by a person who has filed an original petition unless the second or subsequent petition raises grounds for relief that could not reasonably have been raised in the original or amended petition.

(2) When a petitioner has been afforded the opportunity for a direct appeal of the petitioner's conviction, grounds for relief that were or could reasonably have been raised on direct appeal may not be raised ~~in the original or amended petition~~, considered, or decided in a proceeding brought under this chapter. Ineffectiveness or incompetence of counsel in proceedings on an original or an amended original petition under this part may not be raised in a second or subsequent petition under this part.

(3) For purposes of this section, "grounds for relief" includes all legal and factual issues that were or could have been raised in support of the petitioner's claim for relief."
{*Internal References to 46-21-105: None.*}

SENATE BILL NO. 216

INTRODUCED BY VAN VALKENBURG, ANDERSON, CRIPPEN, J. JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROCEDURES FOR POSTJUDGMENT REVIEW IN CRIMINAL CASES; CLARIFYING THE STANDARDS FOR APPELLATE REVIEW OF A DEATH SENTENCE; CLARIFYING THE REQUIRED CONTENTS OF POSTCONVICTION RELIEF PETITIONS; CLARIFYING THE GROUNDS FOR RELIEF THAT MAY BE RAISED AND DECIDED IN A POSTCONVICTION PROCEEDING; AMENDING SECTIONS 46-18-310, 46-21-104, AND 46-21-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, it is the public policy of the State of Montana to provide persons accused of crimes with a fair and speedy trial and direct appellate review of legal issues fairly presented to the trial court; and

WHEREAS, the privilege of the writ of habeas corpus is preserved by Article II, section 19, of the Montana Constitution; and

WHEREAS, the Legislature has set forth in Title 46, chapter 21, MCA, procedures for protecting an offender's right to postconviction review of the judgment; and

WHEREAS, there is no federal constitutional right to a specific statutorily prescribed postconviction procedure; and

WHEREAS, it is the Legislature's intent that decisions of Montana juries and judgments of Montana trial courts in criminal cases, including death penalty cases, be respected and given finality by other reviewing courts unless errors affecting an offender's substantial rights have occurred; and

WHEREAS, amendments to Montana's postconviction relief and death penalty statutes will further the goal of finality by codifying certain interpretations of those statutes by the Montana Supreme Court and clarifying legislative intent with respect to other provisions.

THEREFORE, it is the policy of the State of Montana to prescribe and limit, consistent with constitutional safeguards of the criminal justice process, the authority of an appellate or other reviewing court to consider legal and factual issues determined by the trial or sentencing court.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-310, MCA, is amended to read:

"**46-18-310. Supreme court's determination as to the sentence.** (1) The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

~~(1)~~(a) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

~~(2)~~(b) whether the evidence supports the judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304; and

~~(3)~~(c) whether the sentence of death is excessive or disproportionate to the penalty imposed in ~~similar~~ other cases in which a sentencing hearing was held pursuant to 46-18-301, whether the sentence imposed was death or a sentence other than death, considering both the crime and the defendant. The court shall include in its decision a reference to those ~~similar~~ other cases it took into consideration.

(2) The supreme court shall uphold the sentencing court's findings of fact issued pursuant to 46-18-306 unless those findings are clearly erroneous. The supreme court may not substitute its judgment for that of the sentencing court in assessing the credibility of witnesses; drawing inferences from testimonial, physical, documentary, or other evidence; or resolving conflicts in the evidence presented at the sentencing hearing or considered by the sentencing court."

Section 2. Section 46-21-104, MCA, is amended to read:

"**46-21-104. Contents of petition.** (1) The petition for postconviction relief must:

(a) identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations;

(b) identify any previous proceedings that the petitioner may have taken to secure relief from ~~his~~ the conviction; and

(c) ~~have~~ identify all facts supporting the grounds for relief set forth in the petition and HAVE attached ~~any~~ affidavits, records, or other evidence ~~supporting its allegations or state why the evidence is not attached~~ establishing the existence of those facts.

(2) The petition must be accompanied by a supporting memorandum, including appropriate arguments and citations and discussion of authorities."

Section 3. Section 46-21-105, MCA, is amended to read:

"**46-21-105. Amendment of petition -- waiver of grounds for relief.** (1) All grounds for relief claimed by a petitioner under 46-21-101 must be raised in the original or amended petition. The original petition may be amended only once. At the request of the state or on its own motion, the court shall set a deadline for the filing of the amended petition. If a hearing will be held, the deadline must be reasonably in advance of the hearing but may not be less than 30 days prior to the date of the hearing. Those grounds for relief not raised in the original or amended petition are waived unless the court on hearing a subsequent petition finds grounds for relief that could not reasonably have been raised in the original or amended petition.

(2) When a petitioner has been afforded the opportunity for a direct appeal of the petitioner's conviction, grounds for relief that WERE OR could reasonably have been raised on direct appeal may not be raised ~~in the original or amended petition~~, considered, or decided in a proceeding brought under this chapter.

(3) For purposes of this section, "grounds for relief" includes all legal and factual issues that were or could have been raised in support of the petitioner's claim for relief."

NEW SECTION. **SECTION 4. COORDINATION INSTRUCTION.** IF HOUSE BILL NO. 222 IS PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS THE FIRST SENTENCE OF SUBSECTION (2) OF 46-21-105, THEN THE AMENDMENTS IN HOUSE BILL NO. 222 TO THE FIRST SENTENCE OF SUBSECTION (2) OF 46-21-105 ARE VOID.

NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

-END-